

Supplemental Items for Governance and Ethics Committee

**Thursday, 3rd September, 2015 at
9.30 am** in Council Chamber Council
Offices Market Street Newbury

Part I

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Purpose: To note the outcome of Newbury Town Council (complainant) in respect of Councillor Ruwan Uduwera-Perera (subject members) NPC5/14

Andy Day
Head of Strategic Support

For further information about this/these item(s), or to inspect any background documents referred to in Part I reports, please contact Andy Day/Moira Fraser/Stephen Chard on (01635) 519459/519045/519462

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Written Decision of West Berkshire Council's Governance and Ethics Committee

Date of Committee Meeting	03 September 2013
Reference Number:	NPC5/14
Member who this Decision relates to:	Ruwan Uduwera-Perera
Person who made the original allegation:	Newbury Town Council
Authority:	Newbury Town Council
Chair of the Committee:	Councillor Quentin Webb
Other Members of the Committee:	Councillors: Chris Bridges, James Cole, Lee Dillon, Sheila Ellison (substitute for Anthony Pick), Rick Jones and Tim Metcalfe (substitute for Jeff Beck)
Apologies:	Councillors: Steve Ardagh-Walter, Jeff Beck, Graham Bridgman, Barry Dickens, Anthony Pick
Declarations of Interest:	Councillor Jeff Beck declared a prejudicial interest in this item by virtue of the fact that as a Member of Newbury Town Council Staff Sub-Committee, he was involved with chairing one of the Staff Grievance Committees which had previously considered elements of this complaint. As a consequence he has deemed that it would not be appropriate to participate in this meeting had tendered his apologies and therefore would not be taking part in the debate or voting on this matter. Councillor Anthony Pick declared a

prejudicial interest in this item by virtue of the fact that there might be a 'public perception' that as a result of his close personal relationship with a member of Newbury Town Council's Grievance Panel his position on the this Committee could be associated with the decisions of the Town Council particularly arising from his role as Mayor during the time of the reported incidents as well as his close relationship with a member of the panel. As a consequence he has deemed that it would not be appropriate to participate in this meeting had tendered his apologies and therefore would not be taking part in the debate or voting on this matter.

Councillor Lee Dillon declared a personal interest in this matter as both Ruwan Uduwera – Perera and Julian Swift were known to him as a member of the Liberal Democrat Group. As his interest was personal and not prejudicial or a disclosable pecuniary interest he determined to take part in the discussion and voted on this item.

Councillor Quentin Webb declared a personal interest in this item by virtue of the fact that in his role as a Councillor he had met Ruwan Uduwera-Perera on a few occasions. As his interest was personal and not prejudicial or a disclosable pecuniary interest he determined to take part in the discussion and voted on this item.

It was noted that as Chris Bridges was a non-voting co-opted Member of the Governance and Audit Committee he would take part in the debate but would not be voting on this matter.

Monitoring Officer:	Sarah Clarke
Clerk of the Committee:	Linda Pye, Moira Fraser
Investigator:	Elizabeth Howlett, solicitor from EJHLegal
Date Decision Issued:	04 September 2015

Summary of the Original Complaint

The complaint relates to two specific incidents:

It is alleged that:

- On 29th May 2014 the Subject Member while Deputy Leader of Newbury Town Council (NTC) behaved towards a member of staff in such a way that a reasonable person would regard the behaviour as:
 - a) Disrespectful, contrary to Paragraph 1 of the NTC Code of Conduct; and
 - b) Bullying and intimidatory, contrary to Paragraph 2 of the NTC Code of Conduct.
- The then Councillor Uduwera-Perera raised his voice and spoke to Mr Hunt (the then Chief Executive Officer) in an unprofessional manner; told Mr Hunt to go home before the meeting that Mr Hunt was due to have with him and the Leader of Council had started/concluded; told Mr Hunt not to take notes of the discussion and made allegations that Mr Hunt was responsible for an issue relating to the Town Council's insurance policy.
- On 19th May 2014 the Subject Member while Deputy Leader of NTC behaved towards a member of staff in such a way that a reasonable person would regard as disrespectful, contrary to Paragraph 1 of the NTC Code of Conduct.
- In particular following a disagreement with Mr Taylor in the Town Hall office, former Councillor Uduwera-Perera made a reference to "Numpty Officers" and "a Numpty Ex-Prison Officer" in a raised voice before leaving the Town Hall.

Outcome of the Initial Assessment

The complaint, which was received on the 04 November 2014, was initially assessed on 22 April 2015 by the Monitoring Officer and Independent Person of West Berkshire Council. They concluded that in this case:

- "While not making any findings of fact, if the allegations were substantiated they may constitute a breach of the Code of Conduct and therefore the allegation should be referred for investigation.

Conclusion of the Independent Investigator

To address the specific questions asked by the Monitoring Officer at West Berkshire Council:

1. Did Councillor Uduwera-Perera behave in a disrespectful way towards Mr Taylor on 19th May 2014?

My conclusion is yes. I have no doubt that the phrase "numpty council" was used and I believe the phrase "numpty officers" was also used. I accept that there are far worse words that could be used but context and tone are critical

here. Mr Taylor was offended and upset by the behaviour and attitude as much as the words. He raised a grievance about this because he felt that a stand should be made and that other staff should not be treated in the same way. He may also have been supporting Graham Hunt who he had witnessed being shouted at loudly with aggressive door slamming in a previous incident in February 2014.

2. Did Councillor Uduwera-Perera behave in an unprofessional manner, which could be interpreted as being intimidating and bullying, towards Mr Hunt on 29th May 2014?

My conclusion is yes. I am in no doubt that the behaviour was threatening and intimidating and that this was entirely deliberate. Councillor Uduwera-Perera knew exactly what he was doing. He did not lose control. He wanted to find evidence of wrong-doing and believed he had found it. He believes very strongly that he was doing his public duty in pursuing it. I do have sympathy with this and can appreciate the frustration that nothing seemed to be happening about the serious accusations he was making. Nevertheless, the relationship between councillors and officers must be one of mutual trust and respect. If it is not, then the organisation as a whole suffers and relationships can break down to the point where they no longer function. Where there are concerns about the performance of officers these must be dealt with properly through formal processes with both sides taking appropriate professional advice as necessary. They should not be dealt with by bullying or intimidation.

The Code of Conduct is intended to set down minimum standards of acceptable behaviour. In my view that minimum standard of acceptable behaviour was breached by Mr Uduwera-Perera on both the 19th May 2014 and on the 29th May 2104.

Recommendation of the Advisory Panel

The Advisory Panel did not identify any areas of the Investigator's report that required further clarification.

In respect of complaint NPC5/14 the Advisory Panel concurred with the findings of the Investigator that a potential breach of Newbury Town Council's Code of Conduct had occurred.

The Advisory Panel recommended that the following people be invited to attend the Governance and Ethics Committee where the matter will be determined:

1. Investigator – Elizabeth Howlett
2. Complainant – A representative from Newbury Town Council
3. Subject Member – Ruwan Uduwera -Perera

The Advisory Panel commented that the Complainant and the Subject Member should be able to be accompanied by a representative if they wished to do so. They recommended that no additional witnesses should be invited to attend.

The Advisory Panel recommended that if the Governance and Ethics Committee concurred with the finding that a breach of the Code of Conduct has occurred the Panel would recommend that the following sanctions be applied:

1. A Public Notice should be place in the Newbury Weekly News.

Relevant Sections of the Code of Conduct

Newbury Town Council adopted a Code of Conduct on 17th September 2012 under the provisions of the Localism Act 2011. The two relevant clauses from Newbury Town Council's Code of Conduct are:

Member obligations

1. He/she shall behave in such a way that a reasonable person would regard as respectful.
2. He/she shall not act in a way which a reasonable person would regard as bullying or intimidatory

Summary of the Information Considered and Representations Made at the Meeting

Written Evidence Considered:

1. Investigator's Report
2. Original Complaint NPC5/14
3. Response from Subject Member to the original complaint (dated 18 September 2014)
4. Initial Assessment Notice
5. Advisory Panel Decision Notice
6. Newbury Town Council's Code of Conduct

Oral Evidence Presented at the Meeting:

1. Statement from and questions to the Independent Investigator (Elizabeth Howlett)
2. Statement from and questions to the Complainant (Councillor Julian Swift-Hook on behalf of Newbury Town Council)

Findings as to whether or not the Member failed to follow the Code of Conduct

After carefully considering both the written evidence submitted and the oral evidence given at the hearing, the Committee found that in respect of NPC5/14:

- Mr Uduwera-Perera had breached Newbury Town Council's Code of Conduct by failing to treat others with respect and behaving in an intimidatory and/or bullying manner.

Reasons for the Decision

He shall behave in such a way that a reasonable person would regard as respectful.

In relation to the incident of the 19th May 2014

- The Committee determined that, despite the fact that a more derogatory term could have been used by the subject member and that the meeting was a private meeting, the term 'numpty' and more importantly the way and context in which it was delivered could be regarded by a reasonable person as having been disrespectful to Mr Taylor.

He shall not act in a way which a reasonable person would regard as bullying or intimidatory

In relation to the incident of the 29th May 2014

- The Committee determined that if the subject member felt that there were issues with performance of officers this needed to be dealt with via the prescribed HR procedures.
- The Code of Conduct was adopted to ensure that acceptable levels of behaviour were adopted by Members in their dealings with officers to ensure that they treated each other with mutual trust and respect.
- The behaviour exhibited by the subject member was intimidatory

Sanctions Imposed and the Reasons for the Sanctions

The Committee decided that the following sanctions should be applied:

- A formal public notice setting out that Ruwan Uduwera-Perera had breached Newbury Town Council's Code of Conduct , should be published on both Newbury Town Council and West Berkshire Council's website and in the Newbury Weekly News.

Right to Appeal

Under the revised Localism Act 2011 there is no appeals mechanism in place. Parties may challenge the decision by way of Judicial Review in the High Court. Parties are advised to seek independent legal advice prior to pursuing this option